

## GOVERNMENT OF PUDUCHERRY

## LABOUR DEPARTMENT

(G.O. Rt. No. 59/Lab./AIL/J/2015, dated 18th June 2015)

## NOTIFICATION

Whereas, the award in I.D. (L) No. 41/2014, dated 24-11-2014 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Whirlpool of India Limited, Thirubuvanai, Puducherry and its workman Thiru K. Sivakumar over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour), that the said award shall be published in the official gazette, Puducherry.

(By order)

**A. RAJARATHINAM,**

Under Secretary to Government (Labour).

## BEFORE THE LABOUR COURT AT PONDICHERRY

*Present* : Thiru G. DHANARAJ, B.SC, B.L.,  
Presiding Officer, Labour Court.

*Monday, the 24th day of November 2014***I.D. (L) No. 41/2014**

K. Sivakumar . . . Petitioner

*Versus*

The Personal Manager,  
M/s. Whirlpool of India Limited,  
Puducherry. . . Respondent.

This industrial dispute coming on 17-11-2014 for final hearing before me in the presence of Thiruvallargal P. Sam Japa Singh and A. Sakthivel, Counsel for the petitioner, respondent called absent, set *ex parte*, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

## AWARD

This industrial dispute has been referred as per the G.O. Rt. No. 117/ AIL/Lab./J/2014, dated 13-8-2014 for adjudicating the following:-

(a) Whether the dispute raised by Thiru K. Sivakumar against the management of M/s. Whirlpool of India Limited, Puducherry over non-employment is justified? If justified, what relief the workman is entitled to?

(b) To compute the relief, if any awarded in terms of money, if it can be so computed.

2. The facts giving rise to this industrial dispute as stood exposed from the claim petition runs thus:-

The Government of Puducherry has referred the dispute for adjudication by its order, dated 13-8-2014 bearing G.O. Rt. No. 117/ AIL/Lab./J/2014. The petitioner is working with the respondent for the past 17 years. On 5-3-2013 without giving any reason the respondent did not permit the petitioner to get enter into the factory of the respondent. In this regard on 9-7-2013 a complaint was initiated and during the course of talk the respondent promised that the respondent will give back the job to the petitioner.

On 26-12-2013 the petitioner went to the respondent's factory. He was made to wait in the security room by one Mr. Vedhamaharajan, Human Resource Officer stating that the union leader Udayakumar will come and talk to the petitioner. The petitioner waited for more than 4 hours after that; the union leader Udayakumar came and ill-treated the petitioner; by using filthy words against the petitioner and threatened with dire consequences.

The respondent promised before the Labour Officer that the petitioner will be given job, but the respondent failed to keep his words and threatened the petitioner. The happenings were intimated before the Labour Officer on 30-12-2013, at that time the petitioner was asked to give in written about the happenings. On 21-2-2014 the petitioner has given a complaint before the Labour Officer to take appropriate action against the respondent.

The petitioner has filed the petition before the Labour Officer (Conciliation) on 21-2-2014, based upon the representation, dated 6-8-2013 conciliation proceedings were held on 25-9-2013, 7-10-2013, 22-10-2013, 7-11-2013, 18-11-2013, 6-12-2013, 30-12-2013, 21-2-2014 and 11-3-2014. During the course of conciliation the management representative were not care to file their reply and assured that they are ready for bilateral discussion with the petitioner to arrive amicable settlement and therefore the

conciliation machinery provided many dates and opportunity to have bilateral, discussion with the petitioner to arrive amicable settlement.

Whereas the management not ready for the bilateral discussion as agreed by them and not ready to settle the issue amicably. The petitioner *vide* letter, dated 21-2-2014 alleged that the management, threatened the petitioner with the management union leader and therefore the petitioner was not ready to prolong the issue for long period and insisted to refer the dispute for adjudication as the management violates all the legal provisions under the Act and violates the principle of natural justice. As the management not interested for the voluntarily arbitration and not appeared in spite of repeated notices and therefore the dispute is ended in failure.

The court may be pleased to set aside the Report on Failure of Conciliation No. 1691/LO(C)/AIL/2013 Government of Puducherry, Office of the Labour Officer (Conciliation), dated 30-7-2014 and consequent to the non-employment from 5-3-2013(not allowed to enter the factory) by the respondent management and also direct the respondent management to give employment to the petitioner into service with all back wages, attendance benefit and monetary benefits from 5-3-2013 and pass such further or other orders as this court may deem fit and proper in the circumstances of the case and justice be rendered.

3. No counter was filed on behalf of the respondent.

4. On the side of the petitioner, P.W.1 was examined, and Ex.P1 to Ex.P8 were marked.

5. *The point for consideration is:*

Whether the industrial dispute can be allowed? or not?

6. *On this point:*

Heard. It was submitted by the counsel for the petitioner that the petitioner was the employee of the respondent company for the past 17 years. The respondent company did not permit the petitioner to work as a employee in the said company without giving any reason. And the petitioner was not permitted to enter into the premises of the factory of the respondent on 5-3-2013. The petitioner gave a complaint on 9-7-2013 and negotiation was initiated during the course of talk the respondent promised to get back the petitioner as a employee on 26-12-2013. The petitioner was not permitted to enter into the respondent factory, the petitioner was insulted and was threatened by the union leaders of the said factory. The conciliation was going on by the conciliation officer. But the conciliation was failed. Hence this petition.

7. On behalf of the respondent in spite of the repeated adjournments there was no representation and was set *ex parte*.

8. After hearing the petitioner's counsel, records were perused. On behalf of the petitioner P.W.1 was examined and Ex.P1 to P8 were marked. On the basis of the evidence of P.W.1 a perusal of Ex.P1 which was a photocopy of the pay slip issued in the name of one K. Sivakumar by the respondent company, the Ex.P2 was a letter addressed to the Personal Manager of the respondent company by the petitioner herein for the reason stated thereon. The said letter was addressed seeking the employment from the respondent company. Ex.P3 was also a letter for the very same purpose addressed to the respondent company by the petitioner. Ex.P4 was a certificate given by the respondent company to the petitioner for the good performance of the petitioner performed in the respondent company. Ex.P5 was a petition given to the conciliation officer by the petitioner as mentioned thereon. Ex.P6 was an another petition given by the petitioner to the conciliation officer as mentioned thereon. Ex.P7 was a report given by the concerned conciliation officer regarding the failure of the conciliation between the parties of this petition. Ex.P8 was the notification made by the Government of Puducherry in G.O. Rt. No. 117, dated 13-8-2014 to which the said industrial dispute was arisen.

9. The cumulative study of the exhibits filed by the petitioner as stated above would reveal the fact that the petitioner, namely, K. Sivakumar was an employee in the respondent company and was non-employed by the said company. For the non-employment, there was a conciliation between the petitioner and the respondent company, through the concerned conciliation officer. The said conciliation was also filed and the matter was referred to this forum was clearly established because there was no rebuttal evidence on behalf of the respondent. Hence the court decided on a considered view that the petitioner K. Sivakumar was non-employed by the respondent company, without any valid reason, was established by the petitioner and is entitled for the employment in the respondent company as claimed and also the petitioner is entitled for the relief as a regular employee as claimed in the petition. Accordingly it is ordered that the petitioner should be reinstated to the employment by the respondent company within three months from the date of this order.

10. In the result, the petition is allowed. The petitioner should be given the employment by the respondent company within three months from the date of this order with all benefits as claimed in the petition.

Typed to my dictation, corrected and pronounced by me in the open court on this the 24th day of November 2014.

**G. DHANARAJ,**  
Presiding Officer, Labour Court,  
Pondicherry.

*List of petitioner's witness:*

P.W. 1— 17-11-2014 — K. Sivakumar

*List of petitioner's exhibits:*

- Ex.P1 — Copy of the pay slip for the month of January 2013 issued by the respondent, dated January 2013.
- Ex.P2 — Copy of the letter sent by the petitioner to the respondent along with postal receipt, dated 25-6-2013.
- Ex.P3 — Copy of the letter sent by the petitioner to the respondent along with postal receipt, dated 1-7-2013.
- Ex.P4 — Copy of the Certificate of Appreciation issued by the respondent, dated 11-1-2013.
- Ex.P5 — Copy of the petition before Labour Officer, dated 5-8-2013.
- Ex.P6 — Copy of the petition before Labour Officer, dated 21-2-2014.
- Ex.P7 — Copy of the Report of Failure issued by the Labour Officer, dated 30-7-2014.
- Ex.P8 — Copy of the Government of Puducherry Notification G.O. Rt. No. 117/AIL/Lab./J/2014, dated 13-8-2014.

**G. DHANARAJ,**  
Presiding Officer, Labour Court,  
Pondicherry.

**GOVERNMENT OF PUDUCHERRY  
LABOUR DEPARTMENT**

(G.O. Rt. No. 60/Lab./AIL/J/2015, dated 18th June 2015)

**NOTIFICATION**

Whereas, the award in I.D.(L) No.7/2006, dated 1-4-2015 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Suja Rubber Industries Private Limited, Puducherry and Thiru D. Rajendiran represented by Pudhuvai Thozhilalar Sangam, Puducherry over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

**A. RAJARATHINAM,**  
Under Secretary to Government (Labour).

**BEFORE THE LABOUR COURT AT PONDICHERRY**

*Present :* Thiru G. DHANARAJ, B.SC., B.L.,  
Presiding Officer, Labour Court.

*Wednesday, the 1st day of April 2015*

**I.D. (L) No. 7/2006**

The President/Secretary,  
Pudhuvai Thozhilalar Sangam,  
Pondicherry.

.. Petitioner/  
Workmen.

*Versus*

The General Manager,  
Suja Rubber Industries Private Limited,  
Pondicherry.

.. Respondent/  
Employee

This industrial dispute coming on 24-3-2015 for final hearing before me in the presence of Thiru Durai Arumugam, Counsel for the petitioner, Thiru V. Govindaradjou, Counsel for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

**AWARD**

This industrial dispute has been referred as per the G.O. Rt. No. 22/ AIL/Lab./J/2006, dated 7-3-2006 for adjudicating the following:-

(1) Whether the demand of Puduvai Mill Thozhilalar Sangam (CITU) over non-employment of Thiru D. Rajendiran against the management of M/s. Suja Rubber Industries Private Limited, is justified or not?

(2) To what relief, he is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The facts giving rise to this industrial dispute as stood exposted from the claim petition runs thus:-

The petitioner workman by name D. Rajendiran was working in the respondent company for four years as machine operator. The respondent company was earning good profit but they had refused to implement the E.S.I. and E.P.F. in time. Hence, the employees, who met with accident, could not claim the E.S.I. benefits and they have to approach the Labour Officer in this regard. Since the respondent failed to act in the welfare of the employees, the said D. Rajendiran attempted to form a union. On coming to know the said fact, the respondent company threatened the said D. Rajendiran not to form the union. In spite of the said threat, the said Rajendiran attempted to form the union. Hence, the respondent union issued a show cause notice by leveling false allegation and conducted the enquiry and finally dismissed him from the service. He has conducted the domestic enquiry in a biased manner without giving any opportunity which are entitled for the delinquents as per law as well as by the principles of natural justice. Hence, he prays for reinstatement of the petitioner with full back wages.

3. *Per contra*, traversing the averments the claim statement, the respondent filed the counter with the averments which runs thus:—

The petition filed by the petitioner for reinstatement with continuous service is not maintainable either in law or on facts and hence liable to be dismissed *in limine*.

All the allegations contained in the petition except those that are specifically admitted herein.

At the outset that the demand raised by the petitioner/union is not an industrial dispute as contemplated under section 2(K) of Industrial Disputes Act, 1947. The dispute has not been disclosed properly so as to construe that there is an industrial dispute existing or apprehended. The petitioner/union does not have any *locus standi* to raise any dispute against the management. The dispute is not supported by substantial section of the workers of the establishment. The required formalities in raising an industrial dispute have not been complied with at all. Neither the petitioner/union nor the president has any *locus standi* to raise an industrial dispute or to sign any statement before the various fora. In short, the dispute is not an industrial dispute.

Without prejudice to the above contention Thiru D. Rajendiran was dismissed from service by the management by an order, dated 29-9-2004. The facts and circumstances, which had lead to the dismissal of Thiru D. Rajendiran are hereunder. Thiru D. Rajendiran was working as an operator in the establishment run by the respondent/management. On 23-11-2003 in the general shift, he was working in the laboratory. One Thenmozhi another employee was working in the stores on the same day. At about 11.30 a.m. Thiru D. Rajendiran went to the stores from the laboratory without any permission and with *mala fide* intention entered into the stores and after closing the doors of the store room, he has hold the hands of Thenmozhi, who was alone in the stores and tried to misbehave with the said Thenmozhi. While she escaped from his hold and ran out of the stores, he has threatened her not to say anything about the incident to anybody. Supervisor Thiru Selvakumar and Thiru Kulothungan have been seen her weeping and she has narrated the above incident to them. Thus Thiru D. Rajendiran has misbehaved with a female worker in the stores and has threatened her not to report the incident to anybody.

For the misconduct committed by him, he was suspended pending enquiry by an order, dated 25-11-2003 and a charge memo, dated 14-1-2004 was issued and he was directed him to offer his explanation. He offered his explanation through his letter, dated 17-1-2004. Since the explanation offered by the petitioner was not found to be satisfactory, an enquiry was ordered to be conducted and one Thiru S. Murugesan B.A.B.L., Advocate was appointed as 'Enquiry Officer'. The enquiry was fixed on 28-2-2004 and the same was intimated to him through enquiry notice, dated 23-2-2004.

On 28-2-2004 he has not appeared for the enquiry, however the enquiry was adjourned to 20-3-2004. On 20-3-2004 he appeared before the Enquiry Officer and submitted a letter requesting to allow one Thiru Saravanan, his co-worker as his helper and the same was accepted and Thiru Saravanan has also participated in the enquiry along with him. Thiru D. Rajendiran has participated in the enquiry fully understanding the true sense and significance of the same, with a co-worker of his choice. The enquiry was held on various dates at the request of Thiru D. Rajendiran. On 17-5-2004 the delinquent worker had appeared before the Enquiry Officer along with his co-worker and asked for the list of persons going to be examined as witnesses on the side of the management and requested to adjourn the enquiry and the same was considered. Further the enquiry was adjourned

to 18-6-2004. On 18-6-2004 he appeared before the Enquiry Officer and stated that the enquiry may be proceeded with his co-worker. The management witness Thiru Kulothungan was examined in his presence and he requested for time to cross-examine the management witness. The Enquiry Officer adjourned the enquiry to 26-6-2004. On 26-6-2004, the delinquent worker has appeared before the Enquiry Officer and refused to cross-examine the management witness and walked out from the enquiry. The Enquiry Officer has explained him that if he walked out from the enquiry he will be set *ex parte*. But the delinquent worker has not responded to the words of the Enquiry Officer. Hence he was set *ex parte* and the other management witnesses were examined and the enquiry was conducted and completed on the same day itself.

The Enquiry Officer has given his findings, dated 24-7-2004 wherein he has come to the conclusion that the charges framed against Thiru D. Rajendiran are all proved. The management has gone through the findings as well as the enquiry proceedings and has also independently come to the conclusion that the charges held to have been proved by the Enquiry Officer have all been proved to their satisfaction also. The management has accepted the findings of the Enquiry Officer *in toto* and in all respects. Taking into consideration of the gravity of the misconduct, the management has provisionally come to the conclusion to dismiss the delinquent from service. Accordingly a second show cause notice, dated 13-8-2004 was served on him. He has submitted his explanation, dated 17-8-2004. His explanation was carefully considered by the management and the same was not found to be satisfactory. No management would tolerate such an activity of the delinquent employee, who has misbehaved with the female worker in the store room when she was alone and threatened her not to report same to anybody. The proved charges are very serious and grave in nature warranting the punishment of dismissal. Hence he was dismissed from service by an order, dated 29-9-2004.

The order of dismissal is legal, valid and binding.

The order of dismissal is for the proved misconduct supported by satisfactory evidence recorded in an enquiry held for the purpose. The enquiry is fair and proper. Principles of natural justice were adhered to scrupulously. For the *ex parte* enquiry, he alone is to be blamed.

The allegation of the said Thiru D. Rajendiran that he was working as an operator in the establishment for 4 years and he has tried to started one trade union in the management in which he has worked

with the help of the petitioner/union and hence in order to victimize him, false charges were framed against him and an enquiry was held against the provisions of law and thereby he was dismissed, are all denied as false. The proof of misconduct is anti-thesis to the plea of victimization. The management is not aware of the alleged union activities of the delinquent and there is no such union in the management.

The other allegation that there is a tense situation among the workers in the establishment due to dismissal of above said Thiru D. Rajendiran is denied as utter falsehood. The management has not indulged in any unfair labour practice at any point of time as alleged. In fact the management has taken action against the employee who has committed serious misconduct of misbehaving with a female co-worker during the working hours in her work place. The contra allegations in the petition are all denied as false and the petitioner union is put to strict proof of the same.

The present move of the petitioner is not *bona fide* and is opposed to law.

This court has come to a findings that the enquiry conducted by the respondent/management is not in accordance with the principles of natural justice, then this respondent prays that this court may be pleased to permit the respondent/management to adduce evidence before this court and in such circumstances this respondent prays that this court may be pleased to decide the validity of the Enquiry Officer conducted by the enquiry as a preliminary issue and justice be rendered.

This respondent reserves his right to file additional reply statement, if necessary.

This court may be pleased to dismiss the petition with costs.

It is pertinent to note down here that the dispute in ID(L) No. 7/2006 pending before this court was already decided and disposed by this Tribunal as per the order, dated 26-3-2010. A writ petition was filed by the respondent herein before the Hon'ble High Court of Chennai in WP No.17270/2010 and M.P. Nos. 1 to 3 of 2010 as a petitioner thereon. The said writ petition was disposed by the Hon'ble High Court of Chennai on 10-9-2014 with the direction, the matter was remitted back to this court to decide the matter afresh and the Tribunal was directed to pass order on merits in accordance with law with the direction of time framed for disposal as mentioned thereon. And also the direction was given by the

Hon'ble High Court of Chennai to provide an opportunity to the respondent herein for leading evidence and an same. After hearing both the parties, the matter be decided in accordance with law. Accordingly, the matter was tried against.

On behalf of the respondent, namely, management of Suja Rubber Industries Private Limited, RW1 was examined Ex.R1 to R14 were marked. No witness was examined after remittance by the petitioner.

5. *The point for consideration is:*

Whether the industrial dispute can be allowed? or not?

6. *On this point:*

Both sides heard. It was submitted by the counsel for the petitioner that the petitioner was the Pudukkottai Mill Thozhilalar Sangam, a workman, namely, one D. Rajendiran was also the member of the said union and was a employee of the respondent management organisation. The respondent management organisation did not provide the benefits of the workman as prescribed by the law and was evading the responsibility of a organisation. The subscription to be paid by the respondent management organisation in the Employees State Insurance Corporation and the E.P.F. scheme was not properly done then and there. The workmen of the respondent organisation had started a process as to form a union with the help of the said D. Rajendiran who was the forerunner for forming the union. The respondent management organisation was threatening the said Rajendiran stating that if the said Rajendiran who was the workmen in the respondent management organisation would not stop the process of formation of union, he would face the dire consequences. The respondent management was planning to take revenge against the said Rajendiran, in order to give a message to all the workmen that if the workman was interested in forming the union they would face the dire consequences. The respondent management had dismissed the said Rajendiran without following any natural justice and procedure of law. The dismissal of the said Rajendiran by the respondent management was illegal. No witness was examined by the respondent management as to substantiate their case. Even no domestic enquiry was conducted by appointing a Enquiry Officer and no report was filed by any Enquiry Officer for the charges leveled against the said Rajendiran. The Tribunal had already decided that the dismissal order passed against the workman Rajendiran was illegal and the said Rajendiran was entitled for the employment as per the order, dated 26-3-2010 of this court. The respondent management had filed an writ petition against the order of this court in WP No. 17270/2010 and M.P. Nos. 1 to 3 of 2010, following which the

matter was remitted back to this court for fresh disposal as directed thereon. Even after the remittance of this case to this Tribunal the respondent management did not adduce any valid document as to substantiate their case. The witnesses were not examined by any Enquiry Officer for the charges leveled against the said Rajendiran. The decision of the respondent management for dismissing the said Rajendiran was unilateral and was without any basis. The important witness one Thenmozhi who was alleged to have been misbehaved by the said Rajendiran was not at all either produced before any Enquiry Officer or produced before this court as to prove the charges against the said Rajendiran. Even no complaint was given to concerned police for the misbehavior act of the said Rajendiran. The so called witnesses, namely, one Kulothungan and other was not examined either before the Enquiry Officer or before this court. Hence the case of the respondent was not established and the order of the dismissal passed by the respondent management was illegal. Hence this petition.

7. On behalf of the respondent, it was contended that the workman, namely, one D. Rajendiran was working as a machine operator in the respondent management company. On 23-11-2003, said Rajendiran was working in the laboratory in the general shift at about 11.30 a.m. and he went to the store room from the laboratory without any permission and with *mala fide* intention entered into stores and after closing the doors of the store room, he has held the hands of one lady worker by name Thenmozhi, who was alone in the store room and tried to misbehave with the said worker. She escaped from his hold and ran out of the stores, he has threatened her not to reveal anything about the incident to anybody. The supervisors by name one Selvakumar and one Kulothungan had seen the said Thenmozhi weeping and they were told about the incident. The respondent management had issued a show cause notice to the said workman, namely, Rajendiran. The said Rajendiran had given a reply statement denying the incident the action taken by the respondent management was well within the purview of the law. Hence the petition is to be dismissed.

8. After hearing both sides. Records were perused. On perusal of the records which would reveal the fact that the Industrial Dispute in ID(L) No. 7/2006 was already heard and decided by this Tribunal as per the order, dated 26-3-2010. Against the said order a writ petition was filed before the Hon'ble High Court of Chennai in WP No.17270/2010 which was disposed by the Hon'ble High Court of Chennai on 10-9-2014 with

the direction to remit the matter to this court for fresh disposal as mentioned thereon. After the remittance of this case, on behalf of the respondent one witness was examined and Ex.R1 to R14 were marked, whereas, after remittance no witness was examined, on behalf of the petitioner and no documents were produced after remittance but already PW1 was examined. On behalf of the petitioner Ex.P1 to P5 were marked.

9. On the basis of the submission of the petitioner counsel that the charges leveled against the petitioner, namely, one D. Rajendiran was not established either by the respondent management or by so called victim Thenmozhi because no witness was examined as to the allegation leveled against the said Rajendiran either before any Enquiry Officer or before this Tribunal. Accordingly, a perusal of the evidence of the RW1 at the time of cross-examination who would say as follows (relevant portion):-

“நான் எதிர்மனுதாரர் நிர்வாகத்தில், துணை மேலாளராக 2001 முதல் பணி புரிகிறேன். இந்த வழக்கில் எதிர்மனுதாரர் நிர்வாகம், சாட்சிப்பட்டியல் தாக்கல் செய்துள்ளது. மேற்படி சாட்சிப்பட்டியலில் தேன்மொழி என்பவர் பெயர் இடம் பெற்றது. மேற்படி தேன்மொழியை, இது வரை விசாரிக்கவில்லை. ராஜேந்திரன் என்பவர் தேன்மொழியிடம் தகாதவாறு நடந்தார் என்பதற்கு காவல் நிலையத்தில் புகார் எதுவும் கொடுக்கவில்லை. தற்போது தாக்கல் செய்யப்பட்டுள்ள சாட்சிப் பட்டியலில் உள்ள, R2 என்கிற குலோதுங்கன் என்பவர், மேற்பார்வையாளர் ஆவார். அதே போல், செல்வகுமார் என்பவர் மேற்பார்வையாளர் ஆவார், மஞ்சினி என்பவர் பாதுகாப்பு அலுவலர் ஆவார். மேற்படி செல்வகுமார், மஞ்சினி மற்றும் குலோதுங்கன் சம்பவத்தை நேரில் பார்த்தார்களா என்று எனக்குத் தெரியாது, அவர்கள் நேரில் பார்த்ததாக புகாரில் சொல்லவில்லை மேலும் என்னிடமும் சொல்லவில்லை”.

A cursory reading of the evidence of RW1 at the time of cross-examination would reveal the fact that the so called victim, namely, one Thenmozhi was not at all examined as a witness before this court and also as admitted by the RW1, there was no report given to concerned police station regarding the incident. It was also the evidence of RW1, at the time of cross-examination it was not the statement of so called witnesses one Kulothungan, one Selvakumar and one Manjini that they had directly witnessed the incident, namely, the misbehavior of the said Rajendiran with the said Thenmozhi. Curiously, the above said persons were also not produced before this court as to depose the incident which was alleged to have been happened as alleged by the respondent. It was also the evidence of RW1 at the time of cross-examination as follows (relevant portion):-

“எதிர்மனுதாரர் நிர்வாகத்தில் நடைபெற்ற துறை ரீதியான விசாரணையில் தேன்மொழி என்பவர் விசாரிக்கப்படவில்லை”.

The witness RW1 was also admitting the fact that the said witness Thenmozhi was not enquired by the concerned Enquiry Officer. Even no Enquiry Officer was appointed.

10. The Central Civil Services Classification, Control and Appeal Rules, 1965 *vide* Swamy's Manual on Disciplinary Proceedings Pg.315 says as follows:-

(Digest).

“If the charged officer does not submit his written defence within the time specified or does not appear before the Inquiry Officer or otherwise fails or refuses to comply with the provision of the rules, the Inquiry Officer may hold the inquiry *ex parte*, recording reasons for doing so. For conduct of *ex parte* proceedings see instructions contained in Instruction (6) under Rule 14.

*Ex parte* proceedings, however, do not mean that findings should be given without investigation. Inquiry is still necessary, although it would be in the absence of the charged officer. It has to be borne in mind that the Inquiry Officer's job is not at all affected by the absence of the charged officer. He is charged with the scrutiny of the evidence, both verbal and recorded, and then come to a finding respecting each article of charge. The only difference is that, the employee has denied himself the opportunity of cross-examining the prosecution witnesses and producing and examining his own witnesses. The absence of the charged officer does make it a little complicated for the Inquiry Officer to come to a conclusion in the absence of the explanation of the charged officer. The Inquiry Officer has to examine the records and witnesses to enable him to come to a valid conclusion as to the culpability of the charged officer based on the evidence led before him. If the Inquiry Officer has done all this, the charged officer cannot later on plead that he was not given reasonable opportunity. Even in *ex parte* enquiry, the Inquiry Officer has to fix a date of hearing and intimate the same to the defendant. If he absents himself from the inquiry at one stage, it does not take away his right to attend the inquiry at any other subsequent stage. The charged officer should be allowed to participate in the inquiry at any stage he likes. However, if he does, the ground already covered will not be repeated. All that the Inquiry Officer has to ensure is that he comes to a finding solely on the basis of evidence, both oral and documentary, produced before him”.

11. It has been held in a case *Maganlal Vs. King-Emperor*, (1946) Nag 126 *vide* Law of Evidence by Ratanlal and Dhirajlal, 17th edition, Pg.332 as follows:-

“No evidence affecting a party is admissible against that party unless the latter has had an opportunity of testing its truthfulness by cross-examination”.

A conjoint reading of the above said rule and above said ruling, wherein, it has been clearly held no evidence affecting the party is admissible against that party unless the latter has had an opportunity of testing his truthfulness by cross-examination. In the light of the above said ruling and also above said rule, a perusal of the records on hand, the court decided on a considered view, the so called enquiry alleged to have been conducted by the respondent management were not at all valid in law and the order of termination passed against the workman D. Rajendiran as exhibited Ex.R14 was not at all valid in law. For the simple reason, no proper enquiry was conducted by the respondent management as to find out the truth for the charges leveled against the said D. Rajendiran and no witnesses were examined for establishing the allegation leveled against the said Rajendiran, even the witnesses, namely, the said Thenmozhi, Selvakumar, Kulothungan and Manjini were not produced before this court as to prove the charges against the said D. Rajendiran. Hence the court decided on a considered view that the order passed by the respondent management *i.e.* the order of the dismissal passed against the said Rajendiran was not in accordance with law and the dismissal order was passed by the said Rajendiran was to be set aside and the said Rajendiran was entitled for employment with the respondent management. Accordingly points are answered.

12. In the result, it is ordered that the dismissal order passed against the said D. Rajendiran by the respondent management organisation was ordered to be set aside and the said D. Rajendiran was entitled for employment with the respondent management organisation with all benefits. And there is no order of back wages, in view of the order of the Hon'ble High Court of Chennai passed in WP No. 17270/2010, dated 10-9-2014. The said D. Rajendiran was to be reinstated from the date of receipt of this order by the respondent management with all benefits entitled to him. Accordingly it is ordered.

Typed to my dictation, corrected and pronounced by me in the open court on this the 1st day of April 2015.

**G. DHANARAJ,**  
Presiding Officer,  
Labour Court, Pondicherry.

*List of petitioner's witness: Nil*

*List of respondent's witness:*

RW.1 — 21-1-2015 — R. Venkatesh

*List of petitioner's exhibits:*

- Ex.P1 — Copy of the notice of Additional Commissioner for Workmen's Compensation, Pondicherry in W.C. No. 10/2004, dated 8-2-2005.
- Ex.P2 — Copy of the dismissal order, dated 29-9-2009
- Ex.P3 — Copy of the notice of demand, dated 17-5-2004, 18-6-2004.
- Ex.P4 — Copy of the list of witness issued by the respondent to D. Rajendiran, dated 10-6-2004.
- Ex.P5 — Copy of the reply notice issued by the respondent to D. Rajendiran along with enquiry proceedings, dated 26-6-2004.

*List of respondent's exhibits:*

- Ex.R1 — Original copy of the complaint given by Thenmozhi to the Manager, dated 24-11-2003.
- Ex.R2 — Original copy of the letter given by Kulothungan to the Manager, dated 23-11-2003.
- Ex.R3 — Original copy of the letter given by Selvakumar to the Manager, dated 23-11-2003.
- Ex.R4 — Original copy of the letter given by Manjini to the General Manager, dated 24-11-2003.
- Ex.R5 — Original copy of the charge sheet issued by the management to the workman D. Rajendiran, dated 20-3-2004.
- Ex.R6 — Original copy of the reply given by the workman to the management, dated 17-1-2004.
- Ex.R7 — Original copy of the intimation of domestic enquiry, dated 30-1-2004.
- Ex.R8 — Original copy of the intimation of domestic enquiry, dated 23-2-2004.
- Ex.R9 — Original copy of the intimation of domestic enquiry, dated 13-3-2004.
- Ex.R10 — Original copy of the reply given by workman to the management, dated 1-3-2004.
- Ex.R11 — Original copy of the suspension order, dated 25-12-2003.
- Ex.R12 — Original copy of the second show cause notice, dated 13-8-2004.
- Ex.R13 — Original copy of the reply to second show cause notice, dated 17-8-2004.
- Ex.R14 — Original copy of the termination order along with acknowledgement, dated 29-9-2004.

**G. DHANARAJ,**  
Presiding Officer,  
Labour Court, Pondicherry.



## GOVERNMENT OF PUDUCHERRY

## LABOUR DEPARTMENT

(G.O. Rt. No. 61/Lab/AIL/J/2015, dated 19th June 2015)

## NOTIFICATION

Whereas, the Award in I.D. (L) No. 21/2012, dated 30-12-2014 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. JIPMER Staff Co-operative Thrift and Credit Society and its workman Thiru A. Neelakandan over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

A. RAJARATHINAM,

Under Secretary to Government (Labour).

## BEFORE THE LABOUR COURT AT PONDICHERRY

*Present :* Thiru G. DHANARAJ, B.SC, B.L.,  
Presiding Officer, Labour Court.

*Tuesday, the 30th day of December 2014*

## I.D. (L) No. 21/2012

A. Neelakandan . . . Petitioner

Versus

The Management,  
JIPMER Staff Co-operative Thrift  
and Credit Society, Puducherry. . . Respondent

This industrial dispute coming on 17-12-2014 for final hearing before me in the presence of M/s. Law Solvers, counsel for the petitioner, Thiru D. Sukumaran, counsel for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

## AWARD

This industrial dispute has been referred as per the G.O. Rt. No. 74/AIL/Lab./J/2012, dated 9-5-2012 for adjudicating the following:

(1) Whether the dispute raised by Thiru A. Neelakandan, against the management of M/s. JIPMER Staff Co-operative Thrift and Credit Society Limited (No. P. 231), Puducherry over termination of his services is justified?

(2) If justified, to what relief the petitioner is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The facts giving rise to this industrial dispute as stood exposted from the claim petition runs thus:-

The petitioner was appointed as an employee of the respondent management with effect from 14-11-1980. Out of hard work and perseverance the petitioner rose up to the level of the Secretary of the respondent society with effect from 25-2-2000. The petitioner had rendered 28 years of unblemished service. While it was so, the petitioner was suspended from service *vide* suspension order No. JSCCS/Estt./1/2008, dated 23-7-2008 followed by a charge sheet dated 27-8-2008 on the basis of the audit report for the year 2003-2004. The charges leveled against the petitioner by the respondent society are as follows:

1. (a) During the year 2003-2004 the society had spent from the general funds a sum of ₹ 2,15,632 without the permission of the Registrar of Co-operative Societies for general body meeting and the petitioner failed to properly guide the Treasurer/ Board of Directors;

1. (b) The petitioner failed to maintain value of condemned furniture in stock verification report as on 31-12-2004 properly;

1. (c) The thrift deposit and thrift fixed deposit were refunded to the members of the society before they cease to the member/retirement from the job and charged officer failed to help the Treasurer to take a decision in accordance with the bye-laws of the society;

1. (e) The charged officer failed to abide the loan rules and misguided the Board of Directors in the issue of medium-term loans to the members of the society over and above the eligible limit without Board resolution;

1. (f) The charged officer during the audit period 2003-2004 over-time wages were paid to the staff of the society and the charged officer failed to properly guide the Treasurer and abetted for the lavish expenditure;

1. (g) The charged officer failed to properly examine the loan applications and during the year and medium-term loan were issued to the members of the society without obtaining the loandhar and the surety pay certificate and failed to submit remarks to the Treasurer;

2. The charged officer had unnecessarily disclosed the information regarding payment of advance to Amudhasurabi to the representatives of the JIPMER Employees Union which is also a misinformation;

3. The charged officer had failed to bring to the notice of the Administrator the circular, dated 27-7-2007 issued by the Registrar of Co-operative societies regarding the issue of loans and streamlining procedure and suppressed the receipt of this important circular and failed to implement the Registrar's instructions in the society.

4. The charged officer had issued M.T. loans and consumer loans to Ex-Directors and members of the society over and above the eligible limit and also issued loans to members before the clearance of earlier loans which had resulted in non-recovery of loans.

5. The charged officer had issued NOC before realisation of the loan amount by cheque and intentionally failed to safeguard the assets of the society;

6. The charged officer had failed to effect recovery of loan amount from the members of the society and the medium term loans and consumer loans were issued over and above the eligible limits and failed to examine the loan applications and arranged for the payment of the loans which is against the policy decision of the Board of Directors;

Therefore, the charged officer has committed serious misconducts such as willful failure in discharge of duties entrusted to the delinquent, acting prejudicially against the interest of the society, gross negligence in the discharge of duties, furnishing false statements, failure to maintain secrecy regarding society's affairs, neglect of work, commission of irregularities with regard to the business of the society, abetment to cause deficiency to the assets of the society, failure to abide the rules and bye-laws, failure to maintain true accounts of the society, dishonest act in connection with the society's business and failure to maintain integrity and devotion to duty.

The routine audit report for the year 2003-2004 has lead to the issue of the aforesaid charge sheet, the audit report contained rectifiable defects which involved only procedural lapses and did not contain any allegation of misappropriation of money or malpractices involving moral turpitude. The petitioner thereafter submitted his written explanation, dated 1-9-2008, to the respondent society and the respondent society not being satisfied with the explanation appointed Mr. G. Krishnan, Advocate as the Enquiry Officer to go into the charges leveled against the petitioner *vide* order Ref. No. JSCCS/Estt./1/2008, dated 4-10-2008. In the meantime the respondent society revoked the suspension order pending disciplinary action *vide* Office Order No. JSCCS/Estt/1/2008, dated 4-9-2008.

The Enquiry Officer conducted enquiry on different dates from 5-12-2008 to 17-5-2010 and submitted his enquiry report to the respondent society *vide* Enquiry Report dated 26-6-2010 and given his finding that charge Nos.1(a), 1(b), 1(c), 1(d), 3, 4, 5 are proved and the Charge Nos.1(e), 1(f), 1(g), 2, 6 and 7 are not proved. During the enquiry proceedings the petitioner had sought for assistance of legally trained personnel to act as his defence assistance, the enquiring authority has turned down the request of the petitioner without any valid reasons. Further, the petitioner has also sought for examination of the Administrator of the society to disprove the charges leveled against the petitioner - and the said request was also refused by the Enquiry Officer for the reasons best known to the enquiring authority and thereby caused prejudice to the petitioner. Hence the principle of natural justice was not followed in the enquiry proceedings by denying the petitioner to have defence assistance of his choice and also disallowed petitioner request to examine the Administrator of the society to disprove the charges leveled against the petitioner. Further the enquiring authority without appreciating the facts and circumstances of the case and bye-laws of the respondent society in their proper perspective has mechanically held that the charges were proved and returned a verdict of guilt that charge Nos.1(a), 1(b), 1(c), 1(d), 3, 4, 5 are proved and the Charge Nos.1(e), 1(f), 1(g), 2, 6 and 7 are not proved.

The respondent society was under the management of a duly constituted Board of Directors and as the Secretary of the society the petitioner workman was bound by the decision of the Board of Directors. The petitioner has been made as a scapegoat for all the decisions of the Board and also the dereliction of the other staff members. The petitioner is not a sanctioning authority in the respondent society and the ultimate authority vested with the Board of Directors and all the business activities of the society were ratified by the General Body and by the Board of Directors time to time, accordingly the charges leveled against the petitioner will not survive.

The charges framed against the petitioner were totally motivated on bias and ill-will and the respondent society had taken the lapses pointed out by the audit for which the petitioner could not be held responsible for such lapses. The petitioner has been victimized on account of his non co-operation with certain functionaries of the Board and his refusal to toe their line to meet their personal ends. The nature of the charges and the way in which the petitioner has been held to be lacking in devotion to duty after having served the society for more than thirty years from 14-11-1980 would eloquently speak that the dismissal of the petitioner from service is unjustified and is an act of victimization. It is relevant to point out that the charges alleged against the petitioner did not involve any misconduct involving lack of integrity or honesty like embezzlement and misappropriation of the funds of the society.

The respondent society forwarded the copy of the enquiry report together with a show cause memorandum to the petitioner *vide* Ref. No.JSCTCS/Estt/(1)/2008, dated 17-7-2010. The disciplinary authority of the respondent society even without going through the enquiry report properly had issued the aforesaid memorandum that all the charges framed under charge sheet, dated 27-8-2008 against the petitioner stands proved will speak extent of non-application mind while issuing the second show cause memorandum to the petitioner. Thereafter the petitioner submitted his detailed written explanation, dated 30-7-2010 to the show cause memorandum. After the receipt of the petitioner's explanation the respondent society passed an order of dismissal from service *vide* their Order No. JSCTCS/Estt/(1)/2008, dated 12-8-2010. In the aforesaid dismissal order the respondent society had also deferred the order in respect of the charge memorandum, dated 2-9-2009 on account of imposition of major penalty of dismissal from service.

The petitioner had put in 28 years of service in the society and one year's audit report pointing out irregularities not involving misappropriation and things like that cannot be a ground to dismiss the petitioner. The punishment imposed is therefore quite disproportionate to the charges leveled against the petitioner. The appellate authority has not applied his mind and passed a reasoned order on the grounds of appeal which is mandatory in law. The order of the appellate authority which is professed to have been passed after detailed discussion in the Board meeting is also not supported by reason. Eventhough the petitioner workman asked for a copy of the proceedings of the Board through a lawyer notice, dated 17-3-2011 the respondent management has not sent a reply to the notice.

The order of dismissal from service is totally disproportionate to the charges leveled against the petitioner and the dismissal order, dated 12-8-2010 was passed without application of mind by the disciplinary authority and also by the appellate authority of the respondent society and the respondent society failed to follow the principles of natural justice.

For the reasons stated above, it is prayed that this court may be pleased to pass an award setting aside the order of dismissal from service, dated 12-8-2010 issued by the respondent society and further declare that the petitioner is deemed to be continued in service till the date of superannuation with full back wages and other statutory benefits provided under the social welfare legislation and justice be rendered.

3. *Per contra*, traversing the averments the claim statement, the respondent filed the counter with the averments which runs thus:-

The claim statement filed by the petitioner is not maintainable either in law or on facts and liable to be dismissed.

The duties and responsibilities attached to the post of Secretary of the respondent society would make it abundantly clear that the Secretary of the society is the chief executive of the society and functions in a managerial capacity. The petitioner was holding the post of Secretary in the respondent society and he is not a workman within the meaning of section 2(s) of the Industrial Disputes Act, 1947 and therefore the dispute raised by him was not a valid dispute as he is not a workman who is competent to raise a dispute and the reference is bad in law.

The above contention, it is submitted that Mr. A. Neelakandan, Former Secretary of JIPMER Staff Co-operative Thrift and Credit Society Limited, the petitioner herein was charge sheeted *vide* charge sheet No. JSCCS/Estt/1/2008, dated 27-8-2008 by the management of the respondent society for committing the misconduct of willful failure in the discharge of duties entrusted to him, acting prejudicially against the interest of the society, gross negligence in the discharge of duties, furnishing false statements, failure to maintain secrecy regarding society's affairs, neglect of work, commission of irregularities with regard to the business of the society, abetment to cause deficiency to the assets of the society, failure to abide the rules and bye-laws, failure to maintain the true accounts of the society, dishonest act in connection with the society's business and failure to maintain integrity and devotion to duty.

The petitioner submitted his explanation, dated 1-9-2008 and having not satisfied with his explanation the management appointed Mr. G. Krishnan, Advocate as Enquiry Officer to conduct an enquiry into the charges leveled against the petitioner and submit his report. The enquiry proceedings commenced on 5-12-2008 and concluded on 17-5-2010 which itself would establish the reasonable and sufficient opportunities provided by the Enquiry Officer to the petitioner to defend himself in the enquiry. The allegation that the Enquiry Officer has violated the principle of natural justice is an allegation created for the purpose of raising dispute which does not deserve any consideration either factually or legally.

The Enquiry Officer has meticulously followed the principles of natural justice at every stages of the enquiry and he has provided the required opportunities to the petitioner to cross-examine the management witnesses, to submit his statement, to examine his witnesses, to receive the copies of all the documents as required by him from the management. The Enquiry Officer has also summoned the witnesses as requested by the petitioner for his defence, provided the copies of the enquiry proceedings immediately to the petitioner and allowed him to file his written submission after examination of witnesses. Having utilised all these opportunities provided to defend himself in the enquiry the petitioner cannot turn around and allege that the Enquiry Officer has violated the principles of natural justice.

The allegation that the request of the petitioner to have the assistance of legally trained personnel as his defence assistance was turned down by the enquiry authority without any valid reasons is baseless and unsustainable. The application filed by the petitioner to the Enquiry Officer to permit him to engage an Advocate for the purpose of defence in the enquiry was not allowed by the Enquiry Officer on the ground that the Presenting Officer Mr. R. Durai representing the management was neither a Lawyer nor a legally qualified/trained person and has no previous experience of participation in the domestic enquiry and that the petitioner has also not shown any special reason to permit an Advocate in the enquiry and that the charges framed against the petitioner are mainly based on documents which were handled by the petitioner himself in the capacity of secretary of the society. The petitioner has accepted the order of the Enquiry Officer and subsequently has filed another application to engage one Mr. Ranganathan for the purpose of defence in the enquiry but the petitioner himself has admitted during the enquiry proceedings that the said Ranganathan was not a co-employee but only a 'B' class member of the society and hence the said application was also not considered by the Enquiry Officer.

The Enquiry Officer by enquiry report, dated 26-6-2010 has held that the following charges leveled against the petitioner were established by the management in the enquiry.

1. That the charged officer has failed to properly guide the Board of Director regarding the bye-law provision No. IX (11) that prior permission should be obtained from the Registrar for the huge expenditure of ₹ 2,15,632 incurred for the General Body meeting convened on 28-5-2003.

2. That the charged officer has not maintained properly the furniture account and thus failed to keep the true account of assets and liabilities of the society.

3. That the charged officer has failed to abide the bye-laws of the society and to help the treasurer to take a decision in accordance with the bye-laws in respect of the refund to thrift deposit and thrift fixed deposit.

4. That the charged officer has violated the subsidiary regulation 15(1).

5. That the charged officer by his letter, dated 9-1-2008 has misinformed the management about the incident of locking the society on 9-1-2008.

6. That the charged officer has failed to bring to the notice of the Administrator and suppressed the receipt of the important circular, dated 27-7-2007 issued by the Registrar of Co-operative Societies and has also failed to implement the Registrar's instructions in the society.

7. That the charged officer has willfully failed to examine the loan applications and failed to ensure whether they fall within the norms prescribed in the loan rules and that he has failed to guide the treasurer in his day-to-day administration and executive administration of the society.

8. That the charged officer has, shown favoritism to the member Mr. Iyappan and issued N.O.C. before realization of the cheque and that he has intentionally failed to safe guard the assets of the society.

On careful consideration of the enquiry report it was found that the Enquiry Officer has properly followed the principles of natural justice in the enquiry proceedings by providing the delinquent reasonable opportunities to appear and defend in the enquiry. A show cause memorandum, dated 17-7-2010 along with copy of the enquiry report was issued to the petitioner calling upon him to submit his written explanation as to why the

enquiry report, dated 26-6-2010 should not be accepted in its entirety for imposing major penalty. The petitioner has submitted a written explanation, dated 30-7-2010 wherein, he has prayed for sympathetic consideration of his case and requested for dropping all the actions contemplated against him.

The management on thorough perusal of the enquiry report, enquiry proceedings and the written explanation, dated 30-7-2010 submitted by the petitioner concurred fully with the findings of the Enquiry Officer in respect of the charges leveled against the petitioner in the charge sheet, dated 27-8-2008 and as the charges were serious in nature causing loss to the Society on account of the petitioner misusing his official position and had acted in a manner unbecoming of an employee of the society, the confidence imposed on him by the society was totally lost and the activities of the petitioner could not be entertained even remotely since by his proved misconduct he became unfit to hold such a responsible position in the society.

The management has taken into consideration of the gravity of the charges and loss of confidence and decided that the petitioner deserves to be imposed with a major penalty as contemplated under Chapter VIII rule 29(n) of the Subsidiary Regulation of the JIPMER Staff Co-operative Thrift and Credit Society Ltd., and accordingly dismissed him from the service by order of dismissal, dated 12-8-2010.

The petitioner had acknowledged the receipt of the order of dismissal and filed an appeal, dated 23-9-2010 under Regulation 32(3) of the JIPMER Staff Co-operative Thrift and Credit Society Limited, Employees Service Regulations before the Appellate Authority (Board) of the JIPMER Staff Co-operative Thrift and Credit Society Limited. The ground of the Memorandum of Appeal was discussed by the Board of Directors in the meeting held on 11-1-2011 and after detailed discussion of the grounds of Memorandum of Appeal by the Board the appeal for reinstatement was declined and the penalty imposed on the petitioner by the disciplinary authority was upheld and the same was conveyed to the petitioner by order, dated 4-2-2011.

The allegations made by the petitioner in his claim statement that the charges framed against him were totally motivated on bias and ill-will and that he has been victimized on account of his non-cooperation with certain functionaries of the Board and his refusal to toe their line to meet their personal ends and that the order of dismissal from service is totally disproportionate to the charges leveled against the petitioner and that the inquiring authority without appreciating the facts and circumstances of the case and bye-laws of the

respondent society in their proper perspective has mechanically held that the charges were proved and returned a verdict of guilt the charges Nos.1(a), 1(b), 1(c), 1(d), 3, 4, 5 are proved and the Charge Nos.1(e), 1(f), 1(g), 2, 6 and 7 are not proved and that the dismissal order, dated 12-8-2010 was passed without application of mind by the disciplinary authority and also by the appellate authority of the respondent society of the petitioner are totally false, baseless and unsustainable. It is not out of place to reproduce the admission of the petitioner made in his explanation in respect of the charges leveled against him which reads as follows:

"I am not refuting them but say that they are not of any serious nature and when compared to any other society, the points brought out as charges in our society are too small to be blown to this extent."

The punishment of dismissal from service is proportionate to the gravity of the misconduct and is just and fair. The proved misconduct of the petitioner does not warrant a lenient view except that of dismissal from the service. The management has lost confidence in the petitioner who misconducted himself by committing various acts prejudicial to the interest of the respondent society which made it unsafe for the management to retain him in service. The proved charges are by themselves sufficiently grave warranting imposition of maximum penalty and hence the reliefs sought by the petitioner to pass an award setting aside the order of dismissal from service, dated 12-8-2010 issued by the respondent society and further to declare that the petitioner is deemed to continue in service till date of superannuation with full back wages and other statutory benefits provided under the social welfare legislation are devoid of merits and do not deserve any consideration either factually or legally.

All the other allegations which have not been specifically admitted herein are hereby denied.

4. On the side of the petitioner, P.W.1 was examined, and the side of the respondent R.W.1 was examined, on the petitioner side Ex.P1 to Ex.P9 were marked. On the side of the respondent, Ex.R1 to Ex.R15 were marked.

5. *The point for consideration is:*

Whether the industrial dispute can be allowed? or not?

6. *On this point:*

5. Both sides heard. It was submitted by the counsel for the petitioner that the petitioner was appointed as an employee of the respondent management from the date of 14-11-1980 as clerk. The petitioner put hard work in the respondent management organization and was

placed to the level of Secretary of the respondent society from the date of 25-2-2000. However, the petitioner was suspended from service from the date of 23-7-2008 and a charge sheet was issued to the petitioner, dated 27-8-2008, domestic enquiry was conducted, following the findings of the domestic enquiry, the petitioner was removed from service. The action taken by the respondent management authorities was not valid in law. The petitioner did not commit any lapses or negligence in his duty as alleged by the respondent management. The matter was referred to the conciliation officer, the conciliation was not fruitful to the petitioner. Hence this petition.

7. It was submitted by the respondent counsel that the petitioner was working as a Secretary of the respondent society and was a paid employee and was responsible for the day-to-day administration of the society. The petitioner was placed under suspension by the respondent society for his misconduct pending domestic enquiry. The concerned Enquiry Officer had found that the charges leveled against the petitioner were proved and a report was filed to that effect. The respondent herein had filed a petition as to find out the validity of the domestic enquiry report conducted against the petitioner herein. The said petition was heard by this Tribunal in IA 52/2013 and the Tribunal comes to the conclusion that the enquiry conducted by the respondent management authorities was fair and proper as decided in the said I.A.52/2013. On the basis of the enquiry conducted by the respondent management authorities, the petitioner was found, committed misconduct as decided by the Enquiry Officer marked as Ex.P3 and Ex.R7. Hence, the petition is not maintainable in law. The same is to be dismissed.

8. After hearing both sides, records were perused. On perusal it comes to light, on behalf of the petitioner only one witness was examined as P.W.1 and Ex.P1 to P9 were marked. On behalf of the respondent, RW1 was examined and Ex.R1 to R15 were marked.

9. On the basis of the submission of the counsel for the respondent that the petitioner was charge sheeted for his misconduct and the domestic enquiry was conducted and the charges leveled against the petitioner was proved, the respondent management had taken the action of dismissal of the petitioner from his service, a perusal of the evidence of P.W.1, at the time of cross-examination who would say as follows (relevant portion):-

“உள்துறை விசாரணை முறையாக நடைபெற்றது என்பதை I.A. No. 52/2013 மனுவில் 17-6-2013-ல் உத்தரவு பிறப்பிக்கப்பட்டது என்றால் தெரியாது. அந்த உத்தரவின் மீது மேல்முறையீடு தாக்கல் செய்யவில்லை.

எனது மீது வனையப்பட்ட குற்றச்சாட்டு குறிப்பாணைக்கு நான் விளக்கம் தரும்போது அந்தக் குற்றச்சாட்டுகள் பொய்யானவை மற்றும் தீய எண்ணத்துடன் சொல்லப்பட்டவை. மேலும், சில தவறுகள் சரி செய்துக்கொள்ள கூடியவைகளே என்றால் சரிதான். 17-7-2010-ல் நான் எனது விளக்கத்தை கொடுத்துள்ளேன். அதை தொடர்ந்து 12-8-2010-ல் எனக்கு பணி நீக்கம் உத்தரவு கொடுத்தார்கள். பணி நீக்கம் உத்தரவில் சில குற்றச்சாட்டுகள் நிரூபணமானதாக குறிப்பிடப்பட்டது. அதன் அடிப்படையில் பணி நீக்கம் செய்யப்படுவதாக குறிப்பிடப்பட்டுள்ளது.”.

Accordingly a perusal of the Ex.P3 and R7 would reveal the fact that the petitioner was subject to the domestic enquiry and the charges leveled against the petitioner were proved as found in the enquiry report filed by the Enquiry Officer which was marked as Ex.P3 and R7 as mentioned thereon. A perusal of the records would also reveal the fact that the petition was filed by the respondent management was taken on file by this Tribunal in I.A. 52/2013, wherein, it has been decided by this Tribunal that the domestic enquiry conducted by the management, namely, the respondent management authorities was fair and proper and also it was admitted by the petitioner himself that there was no appeal against the order of this Tribunal passed in I. A. 52/2013, dated 17-6-2013.

10. It has been held in a case as reported in 2010-III-LLJ-298 (Allahabad) as follows:-

"Dismissal - From service - Bank Manager dismissed from service after holding charges proved - Allegations relate to sanction of loan, violation of bank guidelines etc., - Disciplinary as well as/appellate authority found that charges established and punishment imposed based on proved allegations and charges commensurate with misconduct - Interference under judicial review not permissible".

A careful observation of the above said ruling, wherein, it has been clearly held that dismissal from service after holding charges proved, disciplinary as well as/appellate authority found that charges established, interference under judicial review not permissible. In the light of the above said ruling, a perusal of the records on hand, the court decided on a considered view that the above said proposition of law laid down by the Hon'ble High Court is also squarely applicable to the given case. Because, in this case also the Enquiry Officer and the appellate authority had concurrently found that the charges leveled against the petitioner was proved and the petitioner was not suitable for his service in the respondent management society for his misconduct. The enquiry report made by ' the concerned Enquiry Officer was also verified by this Tribunal as decided in I.A.52/2013, dated 17-6-2013.

Hence, the court decided on a considered view, that there is no reason to interfere with the decision of the disciplinary authority of the respondent management society and the petition is not maintainable in law. The same is to be rejected.

11. In the result the reference made in G.O. 74/2012, dated 9-5-2012 was to be closed, as Thiru Neelakandan, who was a petitioner, is not entitled for any relief and the action taken by the management of M/s. JIPMER Staff Co-operative Thrift and Credit Society was justifiable. Accordingly it is ordered.

Typed to my dictation, corrected and pronounced by me in the open court on this the 30th day of December, 2014.

**G. DHANARAJ,**  
Presiding Officer, Labour Court,  
Pondicherry.

*List of petitioner's witness:*

P.W.1 — 3-7-2013 — A. Neelakandan

*List of respondent's witness:*

RW1— 28-3-2014 — R. Durai

*List of petitioner's exhibits:*

- Ex.P1 — Photocopy of the charge sheet issued from the respondent to the petitioner, dated 27-8-2008.
- Ex.P2 — Copy of the reply to charge sheet submitted by the petitioner to the management, dated 1-9-2008.
- Ex.P3 — Copy of the enquiry report submitted by the Enquiry Officer Mr. G. Krishnan, dated 26-6-2010.
- Ex.P4 — Copy of the reply to the enquiry report submitted by the petitioner to the management, dated 30-7-2010.
- Ex.P5 — Copy of the dismissal order issued from the respondent to the petitioner, dated 12-8-2010.
- Ex.P6 — Photocopy of the memorandum of appeal before the appellate authority, dated 23-9-2010.
- Ex.P7 — Copy of the order of the appellate authority issued to the petitioner dated 4-2-2011.

Ex.P8 — Copy of the lawyer notice issued on behalf of the petitioner to the management dated 17-3-2011.

Ex.P9 — Copy of the reply to lawyer notice issued by the respondent, dated 29-3-2011.

*List of respondent's exhibits;*

- Ex.R1 — Copy of the charge sheet issued from the petitioner to the respondent, dated 27-8-2008.
- Ex.R2 — Copy of the explanation submitted by the respondent/petitioner, dated 1-9-2008.
- Ex.R3 — Copy of the enquiry proceedings recorded from 5-12-2008 to 17-5-2010 (pages 1 to 74).
- Ex.R4 — Copy of the deposition as recorded in the enquiry proceedings.
- Ex.R5 — Copy of the written argument submitted by the petitioner/respondent in the enquiry proceedings, dated 3-5-2010.
- Ex.R6 — Copy of the written argument submitted by the respondent/petitioner in the enquiry proceedings, dated 17-5-2010.
- Ex.R7 — Copy of the enquiry report submitted by the Enquiry Officer, dated 26-6-2010.
- Ex.R8 — Copy of the show cause memorandum issued by the petitioner/respondent, dated 17-7-2010.
- Ex.R9 — Copy of the explanation submitted by the respondent/petitioner, petitioner/respondent, dated 30-7-2010.
- Ex.R10 — Copy of the order of dismissal, dated 12-8-2010.
- Ex.R11 — Copy of the appeal filed by the respondent/petitioner before the appellate authority dated 23-9-2010.
- Ex.R12 — Copy of the order passed in the appeal dated 4-2-2011.
- Ex.R13 — Copy of the audit report for the period from 1997-1998 to 2007-2008 of the respondent society.
- Ex.R14 — Copy of the bye-laws of the respondent society.
- Ex.R15 — Copy of the subsidiary regulations governing the service conditions of the employees of the society.

**G. DHANARAJ,**  
Presiding Officer, Labour Court,  
Pondicherry.